

Submission from the UN Office of the High Commissioner for Human Rights

For the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation, on the call for inputs on:

- *What are some specific problems that could be addressed by a UN framework convention on international tax cooperation?”*
 - *Procedural elements*
 - *Substantive elements*

Progress on human rights, the Sustainable Development Goals and the environment is in grave peril. For the first time in a generation, global progress on eradicating poverty is in reverse. The number of people living in extreme poverty is rising and more than 780 million people do not have enough to eat.

Yet at the same time, according to the Tax Justice Network, countries across the world are [losing \\$480 billion per year to global tax abuse](#) from multinational corporations and private individuals not paying their fair share. Low income countries [lose an estimated \\$47 billion per year, which could cover half of their public health budgets](#).

Tax revenues are critical for realizing human rights. It is time to reiterate the legally-binding obligation on all States under the [International Covenant on Economic, Social and Cultural Rights](#) to realize **economic, social and cultural rights**, to the maximum of available resources, including through an **obligation of international cooperation and assistance**. This obligation of international cooperation requires States to “contribute to creating an international environment that enables the fulfilment of these rights” (E/C.12/GC/24). This **obligation to cooperate** provides strong leverage for ensuring all States negotiate together under the UN for a framework convention on international tax cooperation.

[International Covenant on Economic, Social and Cultural Rights](#)

[Article 2.1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.](#)

Member States in the UN Human Rights Council have highlighted how illicit financial flows are depriving countries of resources to realize economic, social and cultural rights, recognizing the need for reform of the global taxation system and for addressing tax evasion by multinational corporations (A/HRC/RES/52/21). The [UN Secretary-General has called for urgent reforms of the international financial architecture, including for international tax cooperation](#). The UN High Commissioner for Human Rights welcomed the leadership of the Africa Group on the resolution [on the “Promotion of inclusive and effective international tax co-operation at the United Nations”](#) (A/C.2/78/L.18/Rev.1), which is critical for [building economies that place people’s human rights at the center](#).

Tax matters for human rights, and human rights matter for tax. Human rights obligations can help to **ensure a fully inclusive and effective international tax cooperation**, by establishing a fairer, more inclusive, participatory, and transparent system and more effective and equitable global tax rules.

In the light of the above, the framework convention and the draft TOR should address the following issues:

Procedural elements: for a fairer, fully inclusive, participatory, transparent and accountable tax system

- **Recognition of UN values and human rights principles in framing the procedural elements of the Convention:** The framework convention should be guided by all the purposes and principles of the [UN Charter](#), especially those relating to international cooperation in solving international problems of an economic, social, cultural, environmental or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction of any kind. The **human rights principles of equality and non-discrimination, meaningful participation, transparency, and accountability** are essential standards for more inclusive international tax cooperation.
- **An intergovernmental tax body under the UN with universal participation of all States:** Establishing an intergovernmental tax body under the UN, with a clear mandate on international tax cooperation, where all countries can participate on equal footing, would help to ensure a more inclusive, universal approach. Representation of all countries in agenda-setting and decision-making will strengthen the legitimacy of global tax governance, enabling all countries to “effectively participate in developing the rules that affect them (SG report, para 14), and should “take into account the different needs and capacities of all countries, in particular least developed countries, landlocked developing countries, small island developing States and African countries” (A/RES/69/313 para 28). As global tax policy is not only a technical matter but a political issue with global impacts, decisions should be taken at a political level, with consideration given to Heads of State and Ministerial participation in decision-making and stocktaking (as in the COP process for the [UN Framework Convention on Climate Change](#)).
- **Transparent rules of procedure:** As set out in the SG’s report, legally established rules and transparent decision-making structures are critical for global tax governance. Bringing global tax policy under the UN will be an opportunity to ensure greater transparency and accountability, using the established rules, procedures and ways of working of the UN, allowing for broad participation of stakeholders, public webcasting and public records of deliberations.
- **Meaningful Participation of all stakeholders:** As well as States, relevant stakeholders, including specialized agencies, funds and programmes of the United Nations system, other international organizations, regional and national institutions and non-governmental organizations and trade unions with EOCOSOC consultative status should be able to meaningfully participate.
- **Guarding against vested interests:** While ensuring the broadest participation of all stakeholders, it will be important to guard against any unequal influence of some stakeholders. This could be modeled for example on the approach of the [WHO Framework Convention on Tobacco Control](#), Article 5.3: *“In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests ...”*
- **Knowledge building, data gathering and impact assessments:** Setting up a function for collecting tax information data (similar to the [UNFCCC Art. 5](#)) for quantitative analysis and assessments of the costs/benefits of tax rules would enable assessment of the fairness of the rules and stocktaking of progress. This should also include **distributional inequality, gender, and human rights impacts**

assessments to monitor the social and economic effects, strengthen accountability, and ensure that the tax rules work to reduce inequalities within and between countries.

- **Dispute resolution process:** It will be critical to ensure that any dispute resolution process is fair and impartial and takes account of States' human rights obligations to protect against issues related to the ['catastrophic consequences' of exorbitant compensation awarded to foreign investors imposed by secretive investor-State dispute settlement mechanisms \(see report A/78/168\)](#).

Substantive elements: [Strengthening effective international tax cooperation for more effective and equitable global rules](#)

- **Recognition of human rights in the Preamble and operative parts of the convention:** The added value of bringing international tax cooperation under the UN lies in developing more effective and more equitable global tax rules aligned with the values, norms and standards of the UN. The framework convention should be fully consistent with the obligations of States in all existing UN conventions on human rights, labour and the environment. It should also take into account the economic, social and environmental dimensions and the rule of law. As well as recognizing the purposes and principles of the [UN Charter](#) (as above), the substantive elements of the framework convention should be grounded in the [Universal Declaration of Human Rights](#) which establishes that “**everyone is entitled to a social and international order in which the rights and freedoms set forth in that Declaration can be fully realized**” and the [Declaration on the Right to Development](#) which calls for “**the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom**”.
- It should make particular reference to the [International Covenant on Economic, Social and Cultural Rights](#) and the legally-binding obligation of all States to progressively realize economic, social and cultural rights to the maximum of available resources, including through international assistance and cooperation. It is important also that the **duty of international cooperation** entails [extra-territorial obligations to refrain from negative cross-border impacts on other State's capacities to mobilize resources to realize those rights](#), including by combating ‘abusive tax practices by transnational corporations’ and avoiding ‘providing excessive protection for bank secrecy and permissive rules on corporate tax’ ([General Comment 24 of the CESCR, E/C.12/GC/24, para 37](#)). The Committee on Economic, Social and Cultural Rights has also stated that “Article 2(1) of the Covenant sets out the expectation that States parties will take collective action, including through international cooperation, in order to help fulfil the economic, social and cultural rights of persons outside of their national territories” (E/C.12/GC/24, para 36-37).
- **Objectives:** The objectives of the framework convention should be ambitious, **focusing on both the promotion of more effective and equitable tax rules, and the prevention of harmful cross-border tax practices**, especially tax-related illicit financial flows, tax avoidance and tax evasion, transfer pricing, financial secrecy and tax havens. The objectives should underline the clear link between tax policies and the commitments of all States to mobilize the necessary resources fulfil human rights obligations, the Sustainable Development Goals and climate commitments.

- **Core principles:** A core principle of the framework convention should be the human rights **principle of equality and non-discrimination** to ensure more equitable tax rules with a fairer allocation of taxing rights amongst States and to promote progressive tax systems (rather than regressive tax-based systems) at both the international and domestic levels. This should emphasize that tax is not only a means to generate revenue but can have a real impact in reducing inequalities within and between States. Gender equality will also be important to ensure that tax rules are not gender-blind but takes account of differential impacts and issues related to unpaid care work. Another core principle should be the human rights **principle of transparency**.
- **The right to privacy should be balanced with transparency and other human rights:** Given that the right to privacy has in some cases been invoked against the principle of transparency, it will be important to clarify that this must be appropriately balanced with all human rights considerations, including the importance of access to information, transparency and the ability of States to mobilize the maximum available resources for the realization of economic, social and cultural rights and to tackle inequalities.
- **Substantive provisions related to transparency to prevent tax evasion, tax avoidance, money laundering and illicit financial flows:** As existing global rules are not operating effectively or are information is not made public, there is an opportunity under the UN process to ensure stronger and more effective rules through:
 - **Automatic exchange of tax and financial information**, building on existing rules, but addressing the problems faced by developing countries in accessing this information through non-reciprocal information exchange.
 - **Public beneficial ownership registers** that are publicly available for transparency around the ownership of companies and trust to combat tax evasion
 - **Public Country by Country Reporting** by multinational groups at a company level on an annual basis to identify where corporate taxes are being paid to address profit shifting
 - **Transparent records of tax exemptions and incentives granted** to better assess the impacts of tax rules at the domestic level, assess their impact on the realization of economic, social and cultural rights and build accountability
- **Other substantive tax related provisions** of the framework convention and the TORs to ensure more effective global tax rules should include:
 - **A new, streamlined and coherent approach to international corporate taxation:** OECD rules are only applicable to a few of the largest and most profitable multinational corporations, so the ineffective and inequitable transfer pricing system still applies for the majority of multinational corporations. It is time to move towards a **new approach of unitary taxation** where multinational groups of companies are taxed as single firms on the basis of their total global profits, with the tax then apportioned fairly amongst all countries where its activities take place. This has been foreshadowed by the Committee on Economic, Social and Cultural Rights which suggested that [“To combat abusive tax practices by transnational corporations, States should combat transfer pricing practices and deepen international tax cooperation, and explore the possibility to tax multinational groups of companies as single firms..”](#) (E/C.12/GC/24, para 37). This should address a **fairer allocation of taxing rights over the profits of multinational corporations in all**

countries where they have economic or business presence and consider a **higher minimum corporate income tax rate** (above the OECD 15% rate) to avoid a ‘race to the bottom’ and global tax competition.

- **A new approach to the taxation of extractive industries, raw commodities, and financial services:** As OECD rules do not address these areas, there is an important opportunity for the UN to consider a new approach and giving special attention to the challenges faced by developing countries.
- **A new global wealth tax** could also be considered for reducing inequality, improving the progressiveness of the global tax regime and raising revenues to contribute to the realization of human rights, the 2030 Agenda, the SDGs and climate priorities.
- **Environmental taxes to promote the right to a healthy environment:** The convention should consider progressive ‘green taxes’ that could stimulate environmentally friendly business practices, while including safeguards and special provisions to address the needs and concerns of developing countries. This could help to limit unsustainable consumption and production, making polluters pay while supporting equitable access to and increased predictability of sustainable development finance. The convention could consider mechanisms for the redistribution of environmental tax revenues from developed to developing countries, including for climate change mitigation and adaptation in line with the principles of equity and common but differentiated responsibilities and respective capabilities. It will be critical to ensure that environmental taxes do not exacerbate inequalities within and between States, or infringe upon the rights of affected communities, and to ensure the rights of people, especially those most vulnerable to environmental degradation, to access information and to meaningful and effective participation in the design, implementation and use of environmental taxes.